

March 15, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

BY: lad
DEPUTY

RED ROCK ANALYTICS, LLC,

Plaintiff,

v.

APPLE INC., QUALCOMM, INC.,

Defendants.

Civil Action No. 6:21-cv-00346-ADA

JURY TRIAL DEMANDED

**RED ROCK'S FOURTH SUPPLEMENTAL BRIEF REGARDING
DEFENDANTS' MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)**

Red Rock filed a Third Supplemental Brief on June 27, 2023 (Dkt. 155), which stated: “[o]ther than *In re Google*, no decision from the Fifth Circuit, the Federal Circuit, or any Federal court of appeals has ever held that ‘product competition’ should be considered under the court congestion factor.” Dkt. 159 at 2 (deemed filed March 1, 2024). That statement was true when the brief was filed, but subsequent court of appeals decisions have issued on this subject.

Since June 2023, the Federal Circuit has twice found the court congestion factor should be neutral in the absence of product competition or other evidence “giving some significance to the time-to-trial difference between districts.” *In re Meta Platforms, Inc.*, No. 2023-143, 2023 U.S. App. LEXIS 28709, at *5 (Fed. Cir. Oct. 30, 2023); *see also In re Samsung Elecs. Co.*, No. 2023-146, 2023 U.S. App. LEXIS 33014, at *7 (Fed. Cir. Dec. 14, 2023).

The *Meta* and *Samsung* decisions, like the earlier *Google* decision, contradict binding Fifth Circuit authority—*Planned Parenthood*—as explained in Red Rock’s Third Supplemental Brief. Dkt. 159 at 1. The Fifth Circuit recently reaffirmed *Planned Parenthood*. *In re Clarke*, No. 24-50079, 2024 U.S. App. LEXIS 5099, at *8-9 (5th Cir. Mar. 1, 2024). *Clarke* held it was within the district court’s discretion to give weight to the court congestion factor despite no evidence of product competition; the defendant was a regulatory agency that did not make any products. *Id.*

DATED: March 14, 2024

/s/ Alden G. Harris

Leslie V. Payne (Texas Bar No. 00784736)

lpayne@hpcllp.com

Michael F. Heim (Texas Bar No. 09380923)

mheim@hpcllp.com

Alden G. Harris (Texas Bar No. 24083138)

aharris@hpcllp.com

HEIM PAYNE & CHORUSH, LLP

609 Main Street, Suite 3200

Houston, Texas 77002

Telephone: (713) 221-2000

Facsimile: (713) 221-2021

T. John Ward, Jr. (Texas Bar No. 00794818)

jw@wsfirm.com

Claire Abernathy Henry (Texas Bar No. 24053063)

claire@wsfirm.com

WARD, SMITH & HILL, PLLC

1507 Bill Owens Parkway

Longview, Texas 75604

Telephone (903) 757-6400

Facsimile (903) 757-2323

S. Calvin Capshaw (Texas Bar No. 03783900)

ccapshaw@capshawlaw.com

Elizabeth L. DeRieux (TX Bar No. 05770585)

ederieux@capshawlaw.com

CAPSHAW DERIEUX LLP

114 E. Commerce Ave.

Gladewater, TX 75647

Telephone: (903) 845-5770

ATTORNEYS FOR RED ROCK ANALYTICS, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record are being served with a copy of the foregoing document via the Court's CM/ECF system on March 14, 2024.

/s/ Alden G. Harris
Alden G. Harris